

January 16, 2019

Mr. Brett Berkley
GreenVest, LLC
2200 Somerville Road, Suite 300
Annapolis, MD 21401

Re: Dott Farm at 12720 Kanes Road-Stream Restoration
Forest Conservation Variance
Tracking #03-19-2905

Dear Mr. Berkley:

This Department received a request for a variance from Baltimore County's Forest Conservation Law on December 18, 2018. The request proposes to clear a total of approximately 0.2 acres of forest in two Forest Conservation Easements (FCE) as part of an overall stream system restoration plan for 9,341 linear feet of numerous unnamed Use III tributaries to Long Green Creek. Specifically, 0.16 acre of clearing would occur in a 4.76-acre FCE, all of which would be reforested with an additional 0.03 acre of infill planting resulting in 0.19 acre of replanting. The other FCE is 1.2 acres, of which 0.04 acre would be disturbed and reforested. The stream restoration is being done to provide TMDL credits for the Maryland State Highway Administration (SHA). This restoration, which predominantly on a large working farm, would include establishing and planting 15.7 acres of Forest Buffer Easement adjacent to the restored streams as well as reforesting the impacted FCEs once the channel is restored to a stable form. This would result in a net increase of forest cover, all of which would be in stream buffer area.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The applicant is seeking to perform stream restoration to provide TMDL credits for SHA on an existing farm. We have determined that while proper stream restoration is not possible without impacting these Forest Conservation Easements, the property could still function as a working farm. Consequently, the

petitioner would not be deprived of all beneficial use of the property if requirement from which the special variance is requested is imposed. Therefore, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that their plight is due to unique circumstances and not the general conditions of the neighborhood. The need for the variance arises from the fact that the Forest Conservation Easements to be impacted are adjacent to the stream to be restored and that this stream restoration is necessary for SHA to meet its TMDL requirements. Therefore, we find that the need for this variance is due to unique circumstances, not general conditions in the neighborhood; thus, the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The proposed stream restoration and riparian reforestation will not affect the character of the neighborhood. Therefore, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The purpose for clearing forest in FCE is to restore a degraded stream system and improve water quality as well as riparian and aquatic habitats. Moreover, the cleared easement area would be reforested in accordance with an approved Forest Buffer Protection Plan. Therefore, we find that granting the variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions necessitating this variance prior to requesting it. The variance request arises from the need to temporarily impact forest that was placed in a protective easement years by the property owner before this stream restoration project was proposed by SHA's representatives. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Although a total of 0.2 acres of Forest Conservation Easement would be cleared, the purpose of this impact is to improve water quality and riparian habitat as well as provide a net increase the amount of forest within the project area by afforesting approximately 15.7 acres of currently degraded, non-forested, riparian buffer and reforesting the disturbed FCE. Therefore, this criterion has been met.

Based on our review, this Department finds that the required criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. The cleared FCE shall be reforested as proposed, and the entirety of both FCEs shall be permanently fenced to exclude livestock and protect against other unauthorized disturbances.
2. Surveyed limits of the FCEs outside of any proposed Forest Buffer Easement shall be permanently posted at 100-foot intervals or at any of its corners with "Forest Conservation Area - Do Not Disturb" signs prior to reduction of any EPS-held environmental securities. EPS staff shall inspect and approve the sign installation.
3. The final Forest Buffer Protection Plan (FBPP) and its performance security required as a condition of the companion Forest Buffer variance approval shall address this reforestation and the posting of the Forest Conservation Easements. This FBPP and its security amount shall be approved by EPS prior to approval of any grading and sediment control plans for this project.
4. The following note must appear on all plans submitted for this project:

"A variance was granted by the Baltimore County Department of Environmental Protection and Sustainability from the Forest Conservation Law on January 16, 2019 to temporarily impact 0.2 acres of Forest Conservation Easement. Conditions were placed on this variance to mitigate forest impacts including reforestation of cleared Forest Conservation Easement area once the stream restoration is complete as well as posting and permanent fencing of the ultimate Forest Buffer and Forest Conservation Easement."
5. The construction drawings (i.e. grading/erosion and sediment control and stream restoration plans) submitted to EPS staff for approval shall reflect the conditions of this variance.

This variance approval does not exempt future development activities or future removal of specimen trees at this site from compliance with Baltimore County's Forest Conservation Law.

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It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the parties responsible for meeting the conditions of this variance sign the statement below and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Glenn Shaffer at (410) 887-3980.

Sincerely yours,

David V. Lykens
Acting Director

DVL:ges

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Property Owner's Signature

Date

Property Owner's Printed Name

Easement Purchaser's Signature

Date

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Easement Purchaser's Printed Name

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